IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5753 OF 2006

Shri Prakash Dattatraya Gholap .... Petitioner

Vs.

The Chief Officer, ... Respondent
Phaltan Municipal Council

Mr. Dilip Bodake for the Petitioner.

Mr. Sachin Manale i/b Suresh S. Pakale for respondent.

CORAM : R.M. SAVANT, J.
DATE : 13TH JUNE, 2007

P.C.

1) This petition impugns the order dtd. 21/6/2006 passed by the learned 5th Adhoc Additional District Judge, Satara by which the appeal filed by the petitioner came to be dismissed.

2) The petitioner is the original plaintiff in Regular Civil Suit no.52 of 2004. The said suit has been filed for an injunction restraining the respondent herein from giving effect to the notice and for causing obstruction to the possession of the plaintiffs. The said notice has been issued by the respondent- Municipal Council on the ground that the Petitioner has encroached upon a public street.

3) The petitioner has purchased an area of about 65.5 sq. mtrs. from one Kazi by Sale deed dtd. 17/6/2003. A correction deed was therefore executed on 17/7/2003 and what is relevant from the point of view ;of the present petition is that the description of the property in terms of the direction on the Southern side in so far as the suit site is concerned was changed. In the said correction deed, the suit site, it has been mentioned that there is a lane and beyond that survey no. 5698 on the Southern side. Inspite of the said correction deed, the petitioner mentioned in the plaint while describing the property in so far as the direction of the suit site on the Southern side is concerned, the property of one Firoz Ahmed Shaikh. Though the said Kazi in terms of correction deed has been shown to be owner of an area of only 50.2 sq. mtrs. The petitioner was claiming an area of 65 sq. mtrs.

4) Pursuant to the notice, survey and measurement was carried out by the Municipal Council and the petitioner was found to be an encroacher on an area of 4.44 sq. mtrs. of a public street. The said measurement was carried out by the City Survey Officer and the petitioner

was asked to remain present. The said measurement map in terms indicates that the petitioner has made encroachment on the public street and that the same was causing hindrance to the residents of the said town. The trial Court as well as appellate Court therefore refused to grant the injunction as prayed for.

5) I have perused the impugned orders passed by the Court below. I do not find any error in the reasoning of both the Courts below in refusing the interim injunction. The trial Court as well as the appellate Court taking into consideration the material produced before them did not deem it to exercise discretion in favour of the petitioner.

6) No interference is therefore called for with the impugned orders. The petition is therefore dismissed.

7) Needless to say that in the event the offending portion is demolished, the Municipal Council will see to do that the demolition is limited to the extent of the encroachment. It is also made clear that the trial Court to decide this suit of the petitioner being RCS No. 52 of 2004 on its own merits and being uninfluenced by the

observations made in this order.

(R.M. SAVANT, J.)